

AGENDA

State of Wisconsin
Livestock Facility Siting Review Board
Meeting

November 21, 2008, 10:00 a.m. to 2:45 p.m.

Boardroom 106

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Madison

10:00 a.m. CALL TO ORDER—Jim Holte, LFSRB Chair

- Open meeting notice
- Approval of agenda
- Approval of September 19, 2008, meeting minutes

Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01 circuit court case status— Cheryl Daniels, Board Attorney

Van Dyke v. Racine County, Docket No. 08-L-02—Jim Holte

- Case review process
- Identification of issues on appeal
- Discussion
- LFSRB decision
- Set date for LFSRB signoff of final written decision on case

11:45 a.m. LUNCH BREAK

12:30 p.m. *Van Dyke v. Racine County, Docket No. 08-L-02* (continued)

Board schedule and future agenda items

- Next meeting—December 19, 2008
- Future agenda items

2:45 p.m. ADJOURN

**DRAFT MINUTES
LIVESTOCK FACILITY SITING REVIEW BOARD
TELECONFERENCE MEETING**

September 19, 2008

Boardroom 106, 2811 Agriculture Drive, Madison, WI

Chair Holte called the meeting to order 12:05 p.m. Other LFSRB members present were Lee Engelbrecht, Andy Johnson, Bob Selk, Bob Topel, Fran Byerly, and Jerry Gaska. A quorum was present. DATCP staff present were Cheryl Daniels and Lori Price.

Call to order

Holte stated the meeting agenda was publicly noticed, as required, and then presented the agenda for approval. Johnson moved to approve the amended agenda, and Byerly seconded the motion. The motion passed.

Holte presented the June 3, 2008, meeting minutes for approval. Johnson made a motion to approve the minutes as written, and Engelbrecht seconded the motion. The motion passed.

Larson Acres, Inc. v. Town of Magnolia, Docket No. 07-L-01, case status—Cheryl Daniels, DATCP

Daniels reported the briefs from the parties involved in the case were sent out to board members either in the meeting packet or through e-mail message. Two questions of law were the essence of the briefs: 1) Was the LFSRB correct in determining that the siting law preempted the ordinances enacted by the town under certain conditions, and 2) Was the LFSRB correct in judging each of the town's conditions in the permit as permissible or not? Bob Hunter, DOJ attorney for the LFSRB, defended the board's position on the questions in his brief to the circuit court judge. The petitioner has one more opportunity for a reply brief then the case will be reviewed by the circuit court judge. If a reply brief is done, Daniels will send a copy to the board members. The judge will review the record including the board's decision and then review each of the briefs. He will be looking to see that the board's decision followed the law.

Later in the meeting, Topel asked when Daniels might anticipate a decision from the Rock County circuit court judge. Daniels responded the earliest a decision might be received is by the end of this year. If the decision goes against the board, the judge would write an order sending the case back to the board. The board would then have to decide whether to send it on to the state court of appeals. Also, other parties involved in the case may also appeal the circuit court decision at the state level.

Johnson and Selk commented that DATCP staff did a nice job of following up on the animal units calculations problem to help guide farmers in filling out the application.

Appeal on Racine County granting permit for Nobel Farm—Cheryl Daniels

Daniels reported that in July of this year, the LFSRB received an appeal on the livestock siting permit granted to the Nobel Farm located in Racine County. The appeal was from a neighbor within the two-mile radius of the facility. The county decided they did not give proper public notice of a

hearing on the permit, therefore, they rescinded their original decision and re-held the public hearing on August 18th. At that meeting, the county granted the permit to the farm. The final written decision was published by the county on August 25th. The neighbor has until September 25th to appeal the local decision. If an appeal is received at DATCP, Daniels will send out the notice of appeal filed and the notice requesting the record from the county. The earliest date the record would be received at DATCP is near the end of October. The earliest possible date the board might hear the case would be at the November 21st meeting, which would be in plenty of time to meet the 60-day review period. Daniels has been in touch with the county to let them know that an appeal might be filed, and the county has started to assemble the record just in case it needs to be sent to the LFSRB. Daniels will also let the board know if the local decision will not be appealed.

How the LFSRB can best utilize DATCP technical assistance and board procedures to better administer future cases—Jim Holte

Holte commented that after the last case the board reviewed, there was not enough discussion on how the board could best utilize DATCP staff's technical assistance while reviewing a case. For future cases, Daniels will work closely with the local government on how to present the record to the LFSRB. Where Holte's concern falls is with areas such as the presentation of the computer program called SNAP-Plus. The board members emphasized these points with respect to using DATCP assistance in future cases: strike the correct balance between seeking assistance and maintaining impartiality; look to the record for answers and ensuring the completeness of the record; understand the prior involvement of DATCP staff in a case; do not standardize the role of DATCP in cases, therefore, approach DATCP for technical assistance on an "as needed" basis; provide specific guidance to DATCP staff on the assistance needed; and rely on board counsel to ensure appropriate communication between DATCP staff and the board, thereby preventing discussion that might affect the board's impartiality

Board schedule and future agenda items

Daniels commented that there probably will not be a need for the board to meet on October 17, 2008, the next scheduled meeting date. Holte added the next time the board will most likely meet is at the November 21, 2008, meeting.

Adjourn

Johnson moved to adjourn the meeting, and Byerly seconded the motion. The motion passed. The meeting ended at 12:50 p.m.

Respectfully submitted,

Bob Selk, Secretary

Date

Recorder: LP